

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Detachment of Certain
Real Property from the City of Cambridge to
Isanti Township (MBAU Docket D-556)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER DENYING DETACHMENT**

This matter came before Chief Administrative Law Judge Tammy L. Pust for hearing on December 18, 2015, in the Council Chambers at the Cambridge City Hall, 300 Third Avenue NE, Cambridge, Minnesota 55008.

Scott Strouts, Scott J. Strouts Law, appeared on behalf of: Jason Belinski and Marian Belinski; Christopher Filleti and Grace Filleti; Timothy Lee Dallman and Karen Susanne Dallman; Don Allen Williams and Stacey Lynn Williams; Gregory Lee Anderson and Julia Ann Anderson; George E. Cannon III and Shannon F. Cannon; Don Huntington and Dianne Huntington; Daniel Higley and Karen Higley; Vincent J. Charles; Darek Davis and Briana Davis; and Christopher Wanner (collectively, Petitioners). Jay Squires, Rupp, Anderson, Squires & Waldspurger, P.A., appeared on behalf of the City of Cambridge (City). Though Don Hansen, Chair of the Isanti Town Board (Township), testified as a witness for Petitioners at the hearing, no one formally appeared on behalf of the Township.

The City and Township filed post-hearing submissions on February 16, 2016, and the City submitted responsive filings on February 26, 2016. The record closed on February 26, 2016.

STATEMENT OF ISSUE

Are the factors of Minn. Stat. § 414.06, subd. 3 (2014) met such that detachment of the West Oaks Subdivision from the City of Cambridge should be granted?

SUMMARY OF CONCLUSIONS

The Chief Administrative Law Judge concludes that Petitioners have not established, by a preponderance of the evidence, that West Oaks Subdivision is rural in character, and so the Petition for Detachment from the City of Cambridge must be denied.

Based upon the evidence in the hearing record, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Findings

1. On October 19, 2015, Petitioners filed a Petition for Detachment of Certain Land from the City of Cambridge, Minnesota (Petition for Detachment) seeking detachment of approximately 57.7 acres of real property (Property or West Oaks Subdivision) located within the City and adjacent to the Township, legally described as follows:

Lots 1 - 11, Block 1, West Oaks Subdivision, City of Cambridge, State of Minnesota.¹

2. On November 2, 2015, the Cambridge City Council opposed the Petition for Detachment by adoption of City Resolution Number R15-067.²

3. On October 22, 2015, the Chief Administrative Law Judge issued an Order requiring the parties to proceed to mediation and set the matter for hearing on December 18, 2015.³

4. On November 10, 2015, the Township adopted a resolution supporting the Petition for Detachment.⁴

5. The parties mediated the matter on December 11, 2015, but were unable to reach resolution.⁵

6. Notice of the evidentiary hearing was published in the Isanti-Chisago County Star on December 10 and 17, 2015.⁶

7. A hearing was held on December 18, 2015, in the Council Chambers at the Cambridge City Hall, 300 Third Avenue NE, Cambridge, Minnesota.⁷

8. At the hearing, sworn testimony was received from several witnesses and Petitioner's Exhibits 1 through 2,1 plus City Exhibits 100 through 122, 124 and 125, were admitted into evidence without foundational objection.

9. The record closed on February 26, 2016.

¹ Exhibit (Ex.) 12.

² Ex. 100.

³ October 22, 2015 Notice of and Order for Prehearing Conference and Hearing, and Order to Participate in Mediation Session.

⁴ Ex. 18.

⁵ December 14, 2015 correspondence from Scott J. Strouts, counsel for Petitioners.

⁶ Affidavit of Publication dated December 17, 2015.

⁷ Recorded transcript of hearing.

Parties

City of Cambridge

10. The City of Cambridge is a municipal corporation organized under the laws of the state of Minnesota.

11. In its latest Comprehensive Plan, approved in 2001, the City describes itself and its then-perceived land use challenges as follows:

Cambridge's urban amenities and small town character along with its direct access to Highways 65 and 95 make it an attractive place to live and work. The Rum River flows through the City and provides Cambridge with a unique scenic and recreational amenity as well. Due to these factors and its proximity to the Twin Cities Metropolitan Area (TCMA), Cambridge has experienced steady growth over the past several decades. This makes careful consideration of the City's future land use very important.

Continued urban growth in Cambridge will pose many land use challenges. The strain between the demands of an urban community and the agricultural character of the surrounding townships will be at the forefront of this struggle. Although the area surrounding the City is predominantly agricultural, as vacant developable land in the City decreases, urban land uses will continue to extend into the neighboring townships, putting development pressure on the surrounding agricultural areas. As residential, industrial and commercial development expands, there will be increased pressure on the City to closely scrutinize land for development. Environmental preservation and annexation dynamics will also become increasingly important.⁸

12. The City is home to various social, cultural, recreational, educational, employment, and economic opportunities, including theaters, restaurants, schools, a regional hospital, a community college, and retail goods and services such as Walmart, Fleet Farm, Cub, Menards, Target and many other goods and service providers.⁹

13. The City has approximately 8,132 residents.¹⁰

⁸ Ex. 119, at 8.

⁹ Ex. 114; Testimony (Test.) of Grace Filletti; Test. of Lynda Woulfe.

¹⁰ Test. of L. Woulfe.

14. The City's 2015 General Fund Operating Budget totaled approximately \$6.1 million, of which approximately \$4.1 million was raised from property taxes.¹¹

Petitioners

15. The Petitioners are all the record owners of properties within the West Oaks Subdivision,¹² each owning the lot and acreage listed below:

- Lot 1: Jason Belinski and Marian Belinski (4.4 acres);
- Lot 2: Christopher Filleti and Grace Filleti (4.7 acres);
- Lot 3: Timothy Lee Dallman and Karen Susanne Dallman (4.0 acres);
- Lot 4: Don Allen Williams and Stacey Lynn Williams (3.3 acres);
- Lot 5: Gregory Lee Anderson and Julia Ann Anderson (2.77 acres);
- Lot 6: George E. Cannon III and Shannon F. Cannon (2.0 acres);
- Lot 7: Don Huntington and Dianne Huntington (2.9 acres);
- Lot 8: Daniel Higley and Karen Higley (2.9 acres);
- Lot 9: Vincent J. Charles (12 acres);
- Lot 10: Darek Davis and Briana Davis (2.3 acres); and
- Lot 11 Christopher Wanner (16.5 acres).

16. All of the Petitioners signed the Petition for Detachment.¹³

Subject Parcels

17. The West Oak Subdivision is physically separated from the main portion of the City by the Rum River and by surrounding properties on the north, east and south, all of which are located in the Township.¹⁴

18. The West Oaks Subdivision is made up of wooded lots improved with homes that are located to the west of the Rum River, and is separated from the City core by this natural boundary.¹⁵

19. The homes on the 11 lots of the West Oaks Subdivision are separated from their nearest neighbor by an approximate distance of between 138 and 553 feet, in specifics as follows: two homes - approximately 553 feet;¹⁶ one home –

¹¹ Ex. 19.

¹² Testimony of Petitioners present at the hearing; Ex. 12.

¹³ Ex. 12.

¹⁴ Ex. 112.

¹⁵ Ex. 112.

¹⁶ Lots 11 and 9, as indicated on Ex. 108.

approximately 345 feet;¹⁷ one home – approximately 138 feet;¹⁸ four homes – approximately 207 feet;¹⁹ and three homes – approximately 276 feet.²⁰

20. Some but not all of the lots in the West Oaks Subdivision are covered in trees and other vegetation to the extent that the homes are not visible from the public access roadways or by their nearest neighbors.²¹

21. The West Oaks Subdivision is located approximately three to four miles from the City core, which is generally accessible by vehicle in less than five minutes.²²

Property Background

22. Prior to 1994, the Property was located within the Township and within the County of Isanti (County), and was owned by Robert C. Weisbrod and Pearl Weisbrod, together with Frank B. Weisbrod and Shirley Weisbrod (collectively, Weisbrods). The Property was unimproved; no one resided on it.²³

23. During the relevant timeframe, the Township had no zoning ordinances but instead relied on the County's zoning and other land use controls.²⁴ The Property was located within the County's USA-2 Urban Service Area District #2, which allowed no more than four parcels for single-family dwelling units per quarter-quarter section – or the equivalent of 10 acre lots.²⁵

24. Given the County's zoning restrictions, the Property was not then developable into 11 platted lots designed to be improved with 11 single-family residential structures, absent a change in land use controls or a municipal boundary adjustment.²⁶

25. In 1994, the Weisbrods filed with the City a Petition for Annexation pursuant to Minn. Stat. § 414.033, subd. 5 (1992), which allowed annexation by ordinance only upon a determination that the Property was already or was "about to become urban or suburban in character."²⁷ The Weisbrods sought annexation for the

¹⁷ Lot 10 from Lot 8, as indicated on Ex. 108.

¹⁸ Lot 8 from Lot 7, as indicated on Ex. 108.

¹⁹ Lots 7, 6, 5 and 4, as indicated on Ex. 108.

²⁰ Lots 1, 2 and 3, as indicated on Ex. 108.

²¹ Exs. 1D, 2C, 3C, 4C, 5D, 6C, 7C, 8C, 9C, 10C, 11C, 122.

²² Test. of L. Woulfe.

²³ Correspondence from Jimmy A. Lindberg, Parker, Satrom, O'Neil, Lindberg & McKinnis, P.A., to Terry Merritt, Executive Director, Minnesota Municipal Board regarding the filing of Cambridge Ordinance No. 281 annexing the Weisbrod property (Apr. 5, 1994) (public record in Minn. Mun. Bd. Docket No. A-5322-Cambridge/Isanti Township) (Lindberg Letter). The Chief Administrative Law Judge takes judicial notice of this filing pursuant to Minn. R. Evid. 201, 1005.

²⁴ Test. of Don Hansen.

²⁵ Ex. 107; Test. of John Shardlow.

²⁶ Ex. 107; Test. of Vincent Charles.

²⁷ Lindberg Letter; Minn. Stat § 414.033, subd. 5 (1992).

purpose of avoiding the County's density restrictions and allowing "potential urban/suburban development of this area" with an increased density rate allowed by the City's zoning controls.²⁸

26. On April 1, 1994, the City granted the requested annexation by adoption of Ordinance No. 281, finding that the Property was "about to become urban or suburban in character" and extending the boundaries of the City include 60 acres of real property, including the Property at issue in the present matter.²⁹

27. The annexation became effective on May 2, 1994, the date on which the Minnesota Municipal Board approved City Ordinance No. 281.³⁰

28. Upon annexation, the West Oaks Subdivision was placed in the Shoreland Special Protection District and the R.A. Rural Residential/Agricultural District for zoning purposes as required by Section 156.023 of the City's Zoning Ordinance, which automatically places that designation on all annexed properties until placed in another district by action of the City Council.³¹ There has been no request for nor any City Council action to modify this zoning designation subsequent to 1994.³²

29. In August 1999, Joseph F. Semler Jr., Rebecca Semler and Allen M. Hochhauser (collectively, Developers) sought the City's permission to plat the Property as West Oaks Subdivision containing 11 lots designed to be improved with the construction of 11 single-family residences.³³

30. The City approved the preliminary³⁴ and then final plat³⁵ of the West Oaks Subdivision to allow the Developers to build 11 single family residences on the Property.

31. Through the mandated execution of a Development Agreement, the City required the Developers to: rename the roadway then called 319th Avenue NE and/or 32nd Avenue SW to 28th Avenue SW; dedicate the widened roadway to the public; and improve it with a bituminous surface.³⁶

32. In acknowledgement that public utilities were not available to the Property as noted in the Planning Commission Staff Report dated September 14, 1999,³⁷ "[s]oil boring information was submitted for each lot as required and approved

²⁸ Lindberg Letter; Test. of V. Charles.

²⁹ Ex. 101.

³⁰ Ex. 102.

³¹ Ex. 106; Test. of L. Woulfe.

³² Test. of L. Woulfe.

³³ Ex. 103, at 1-6.

³⁴ City Resolution No. R99-68, Ex. 103, at 7.

³⁵ City Resolution No. 99-84, Ex. 103, at 8; Ex. 105.

³⁶ Ex. 104; Ex. 105.

³⁷ Ex. 103, at unnumbered p. 10 (9-14-99 Planning Commission Staff Report, at 2).

by the City's Building Official as adequate to support two individual on-site sewage treatment systems on each lot."³⁸

33. Pursuant to the executed Development Agreement, the Developers were required to construct private utilities, including wells and septic systems, upon each lot within West Oaks Subdivision.³⁹

34. Upon obtaining the City's approval, the Developers constructed 11 residences, one on each lot.⁴⁰ Construction was completed at some point before April, 2002.⁴¹

35. The City allowed the platting and construction of West Oaks Subdivision at a minimum lot size of two acres.⁴²

36. The Petitioners purchased the 11 lots for the purpose of residing on the Property.⁴³

37. In 2004, and again in early 2015 prior to filing the present Petition for Detachment, the Petitioners' requested that the City establish a rural service district for their properties as a means of having the Property taxed at the same rate as neighboring properties in the Township.⁴⁴ The City denied both requests to establish a rural service district.⁴⁵

Property Today

38. As illustrated below, the West Oaks Subdivision abuts the City on the Property's southeastern corner, its western boundary, and half of its northern boundary, and abuts the Township on the Property's east, south and half of its northern boundaries.⁴⁶

³⁸ *Id.*

³⁹ Ex. 104, at 2.

⁴⁰ Test. of V. Charles; Ex. 116.

⁴¹ Ex. 116.

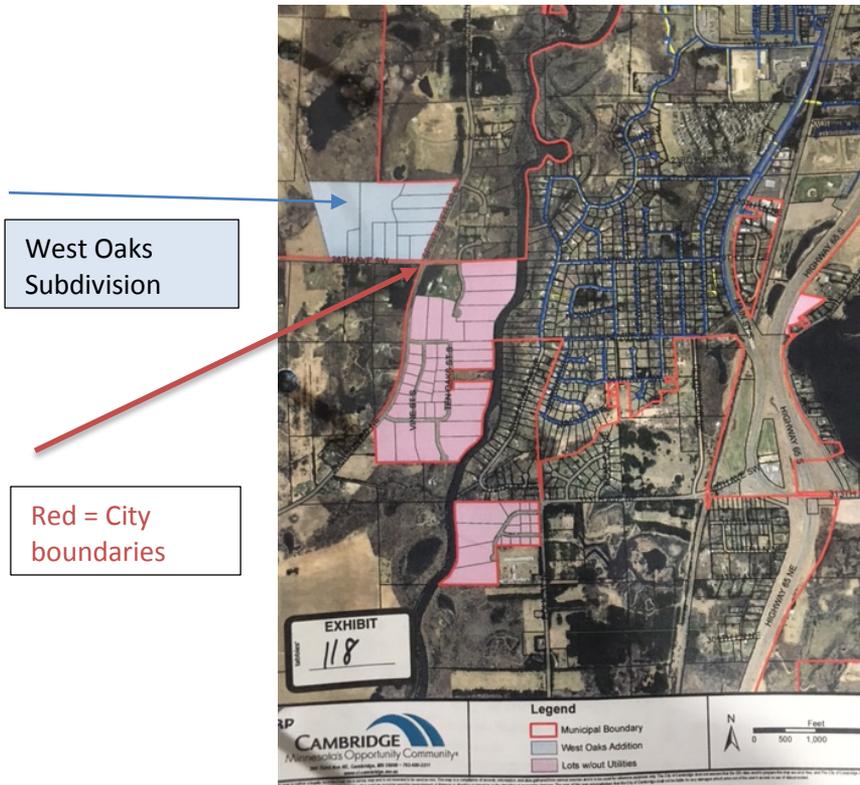
⁴² Exs. 12; 103, at 8; 105.

⁴³ Ex. 12.

⁴⁴ Ex. 12; Test. of Julia Anderson.

⁴⁵ *Id.*

⁴⁶ Ex. 118.



39. The West Oaks Subdivision is zoned Rural Residential/Agricultural (RA)-Shoreland Special Protection District.⁴⁷ Permitted uses within this zoning classification include agriculture, single family dwellings and the keeping of horses, cattle, sheep, goats or large poultry.⁴⁸

40. Lots 11 and 9 include portions of Weisbrod Lake. In addition, three designated wetlands are located within the West Oaks Subdivision.⁴⁹

41. The Property is in large part wooded.⁵⁰ Wildlife roams regularly and freely on the Property, including deer, many species of birds, ducks, geese, muskrats, beavers and red fox.⁵¹ Black bear(s) have been seen on the Property as well.⁵²

42. The West Oaks Subdivision is developed with 11 single-family residences in which thirty-nine individuals reside.⁵³

43. The properties have individual septic systems, propane tanks, culverts

⁴⁷ Ex. 12.

⁴⁸ Ex. 15; Ex. 106 (Cambridge Zoning Ordinance Section 156.043(A) and (B)).

⁴⁹ Ex. 12, at Attachment E.

⁵⁰ Exs. 1D, 2C, 3C, 4C, 5D, 6C, 7C, 8C, 9C, 10C, 11C.

⁵¹ Exs. 1D, 5D, 6C, 8C, 9C; Test. of G. Filetti; Test. of J. Anderson; Test. of L. Woulfe.

⁵² Ex. 5D; Test. of J. Anderson.

⁵³ Ex. 12.

and private wells.⁵⁴

44. To the west and northwest of the West Oaks Subdivision is the municipal airport, located within the City's boundaries. The airport constitutes an industrial use pursuant to the City's land use controls.⁵⁵

45. To the north of the West Oaks Subdivision and within the Township is a 70-acre parcel owned by Robert L. Guetschoff and Heidi A. Guetschoff (Guetschoff Property). The Guetschoff Property is improved with one single-family residential structure⁵⁶ and consists primarily of nonproductive agricultural land⁵⁷ on which the property owners raise chickens and goats.⁵⁸

46. To the north of the Guetschoff Property is a 20-acre parcel owned by JoAnn Sprino and Brian L Sprino (Sprino Property) and located within the Township. In 1995, the prior owner of this parcel, Richard Guetschoff, petitioned the City to annex the parcel, attesting that it was about to become urban or suburban in character. Approving the petition, the City annexed the parcel by ordinance in 1995.⁵⁹ In 2002, the Sprinos petitioned for the property's detachment from the City, arguing that it was rural in character and had not been developed for urban residential, commercial or industrial purposes. The City opposed the detachment. Following a hearing, the Sprino Property was ordered detached from the City and, by operation of law, became annexed into the Township.⁶⁰ Throughout the described timeframe and to the present, the Sprino Property has been improved with one single-family dwelling and a detached garage.⁶¹ The remainder of the property is currently designated in the County property records as vacant and nonproductive agricultural land.⁶²

⁵⁴ Exs. 5D, 6C, 7C, 9C, 103, 104; Test. of G. Filleti; Test. of L. Woulfe.

⁵⁵ Ex. 118; Test. of D. Hansen.

⁵⁶ *In the Matter of the Petition of Brian and JoAnn Sprino for the Detachment of Certain Land from the City of Cambridge pursuant to Minn. Stat. Chapter 414*, Docket No. 1-2900-14926-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Minn. Off. Admin. Hrgs Sept. 26, 2002).

⁵⁷ Guetschoff Parcel Summary, *available at*

<https://beaconbeta.schneidercorp.com/Application.aspx?AppID=511&LayerID=7920&PageTypeID=4&PageID=3862&Q=762960467&KeyValue=050062700>, of which the Chief Administrative Law Judge takes judicial notice pursuant to Rules 201 and 1005, Minn. R. Evid.

⁵⁸ Ex. 12; Test. of G. Filleti.

⁵⁹ Records in Minn. Mun. Bd. Docket No. A-5582 (Cambridge/Isanti Township). The Chief Administrative Law Judge takes judicial notice of this filing pursuant to Minn. R. Evid. 201, 1005.

⁶⁰ *In the Matter of the Petition of Brian and JoAnn Sprino for the Detachment of Certain Land from the City of Cambridge pursuant to Minn. Stat. Chapter 414*, Docket No. 1-2900-14926-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Minn. Off. Admin. Hrgs Sept. 26, 2002).

⁶¹ Ex. 116.

⁶² Sprino Parcel Summary, *available at*

<http://beacon.schneidercorp.com/Application.aspx?AppID=511&LayerID=7920&PageTypeID=4&PageID=3862&KeyValue=050063500>, of which the Chief Administrative Law Judge takes judicial notice pursuant to Rules 201 and 1005, Minn. R. Evid.

Municipal Services

Current Services

47. The West Oaks Subdivision is bounded on the east by County Road 70 and on the south by 28th Avenue SW, both paved roads. The West Oaks Subdivision is accessible to vehicular traffic via these two roadways.⁶³

48. The County maintains and plows County Road 70.⁶⁴

49. Pursuant to a joint agreement, the City plows certain Township streets and the Township provides snowplowing services for 28th Avenue SW.⁶⁵

50. The City is responsible for providing routine surface maintenance of 28th Avenue.⁶⁶ The record does not indicate that the City has completed or undertaken any street maintenance, repairs or improvements on 28th Avenue SW, nor does the record indicate that any was necessary.

51. The City has not extended sewer, water, curbs, storm sewers, or public walking trails to the West Oaks Subdivision.⁶⁷

52. The City has not installed street lighting or sidewalks in West Oaks Subdivision. Though the City has a process whereby landowners can petition for the installation of sidewalks and/or streetlights and be assessed the costs of installation, the Petitioners have never petitioned the City for these improvements and the City has no plans to construct such absent a request.⁶⁸

53. The City provides fire protection services to the West Oaks Subdivision. The fire department is housed in City Hall, located approximately three minutes from the Property.⁶⁹

54. The City also provides both routine patrolling and incident response police protection to West Oaks Subdivision. Regular police patrols drive on County Highway 70 along the east boundary of the West Oaks Subdivision, and turn west on 28th Avenue SW to observe the municipal airport property. Since 2010, the City's police response time to the proximate area has averaged approximately six minutes.⁷⁰

⁶³ Ex. 121.

⁶⁴ Test. of L. Woulfe.

⁶⁵ Ex. 120; Test. of L. Woulfe.

⁶⁶ Test. of L. Woulfe.

⁶⁷ Test. of L. Woulfe.

⁶⁸ Test. of L. Woulfe.

⁶⁹ Ex. 117; Test. of L. Woulfe.

⁷⁰ Test. of L. Woulfe.

55. The City also provides the Petitioners and all other City residents with planning and zoning services, public works and economic development services, plus election administration.⁷¹

56. Development in the area includes the construction of the Anoka-Ramsey Community College – Cambridge and the Armed Forces Reserve Community Center, both approximately two miles north of the West Oaks Subdivision at the intersection of Highway 95 and County Road 70.⁷²

57. The record is silent as to how recently other residential development has occurred in the proximity of the West Oaks Subdivision, although the tour of the area revealed that there are single-family residences and residential developments to the south and to the east of the West Oaks Subdivision.⁷³

58. The preponderance of evidence at hearing established that neither the City nor any other entity has any current or reasonably anticipated plans or need for further development of the Property.⁷⁴

Planned Services

59. The City adopted a Comprehensive Plan in 2001.⁷⁵

60. Within the 15-year old Comprehensive Plan, the West Oaks Subdivision is classified as having the following characteristics:

- a. An existing use of platted but “Vacant,”⁷⁶ which was accurate in 1999 when the planning process was commenced;⁷⁷
- b. Located within the County’s Urban Services Area I Boundary,⁷⁸ which is intended to “allow higher density residential development with temporary, on-lot utilities in areas adjacent to urban development in close proximity to incorporated cities.”⁷⁹
- c. Zoned as “R-1, One Family Residence”⁸⁰ and designated for a future zoning district of “Rural Residential” given the residential density that

⁷¹ Test. of L. Woulfe.

⁷² Ex. 114; Test. of L. Woulfe; Test. of D. Hansen.

⁷³ See also Ex. 108.

⁷⁴ Ex. 119; Test. of D. Hanson; J. Anderson; V. Charles; L. Woulfe; J. Shardlow.

⁷⁵ Exs. 13, 119.

⁷⁶ Ex. 119, Figures 4, 6.

⁷⁷ Ex. 119, at 1.

⁷⁸ Ex. 119, Figure 8.

⁷⁹ Ex. 107, at 41.

⁸⁰ Ex. 119, Figures 5, 6.

already exists in the area.⁸¹ Given Cambridge Zoning Ordinance at Section 156.023, it appears that this listed zoning classification is incorrect and that the correct zoning for the Property is R.A. Rural Residential/Agricultural District.⁸²

61. In 2009, the City commissioned and the City Council adopted a Comprehensive Water Study, which describes the City's current water distribution system, projects the community's future water needs and identifies necessary distribution system expansions and improvements.⁸³ The Comprehensive Water Study notes that the City currently has two water storage tanks with the capacity to store 1.3 million gallons of treated water. It also projects that the City will need the capacity to store over that amount by the year 2020 if projected increases in water use are realized:

The time at which average day demands grow to this level will be determined by future growth of the City. As shown in Table 7, the City would need additional storage in the next 5-10 years if growth takes place as shown in the growth projections. The City should continue to monitor average day water use and anticipate the construction of a new elevated storage tank in the next 5-10 years.⁸⁴

62. The Comprehensive Water Study recommends that "Proposed Water Tower No. 3" be located on the west side of the Rum River, and projects construction-related costs of approximately \$2.56 million.⁸⁵

63. The study contemplates that water system improvements, including Proposed Water Tower No. 3, would be funded by water access and connection charges to be assessed to properties within the intended future service area, including the West Oaks Subdivision.⁸⁶

64. The City Council has adopted a capital improvement plan that includes funding for construction of Proposed Water Tower No. 3 in 2018.⁸⁷

65. In 2012, the City attempted to purchase land for construction of Proposed Water Tower No. 3, but the effort proved unsuccessful. The City is not currently in discussions to purchase land for the location of Proposed Water Tower

⁸¹ Ex. 119, at 139, Figure 17.

⁸² See Exs. 12; 112.

⁸³ Ex. 109.

⁸⁴ Ex. 109, at 18.

⁸⁵ Ex. 109, at 24.

⁸⁶ Ex. 109, at 27-29; Test. of L. Woulfe.

⁸⁷ Ex. 125.

No. 3.⁸⁸

66. Since 2009, the City has been collecting charges from existing water users to defray the cost of constructing Proposed Water Tower No. 3.⁸⁹

67. According to the City's 2000 Comprehensive Sanitary Sewer Plan, The West Oaks Subdivision is contained in the West Rum River Sanitary Sewer District, an area defined for future sewer service at some unidentified point in time⁹⁰ and defined as follows:

The West Rum River District is located between the Rum River and the west boundary of the study area, south of TH 95. Currently, the West Rum River District has no sewer service. The approximate developable area is 861 acres, most of which is planned to be residential. The Cambridge Municipal Airport is located on approximately 260 acres zoned for industrial use. It is estimated that the airport will ultimately generate approximately 15,000 gallons per day of wastewater.

A proposed lift station will convey the wastewater from this district easterly across the Rum River to an existing 15-inch diameter trunk main (proposed to be increased to a 24-inch diameter), which flows north to the WWTF. Gravity mains flowing to the proposed lift station in the West Rum River District will range in size from 8-inches to 21-inches in diameter.⁹¹

68. Where and when the City has provided municipal water service, it has also provided sanitary sewer service.⁹²

69. The Rum River is classified in Minnesota as one of the state's Outstanding Resource Value Waters, and is designated as a Wild and Scenic River under Minnesota law.⁹³ As such, the City is committed to protecting the Rum River, and takes its environmental importance into consideration when determining whether to bring City sewer and water service to an area as a means of eliminating potential ground water pollution sources, including individual septic systems.⁹⁴

⁸⁸ Ex. 110; Test. of L. Woulfe.

⁸⁹ Test. of L. Woulfe.

⁹⁰ Ex. 111, at 9 and Figure 3.

⁹¹ Ex. 111, at 16.

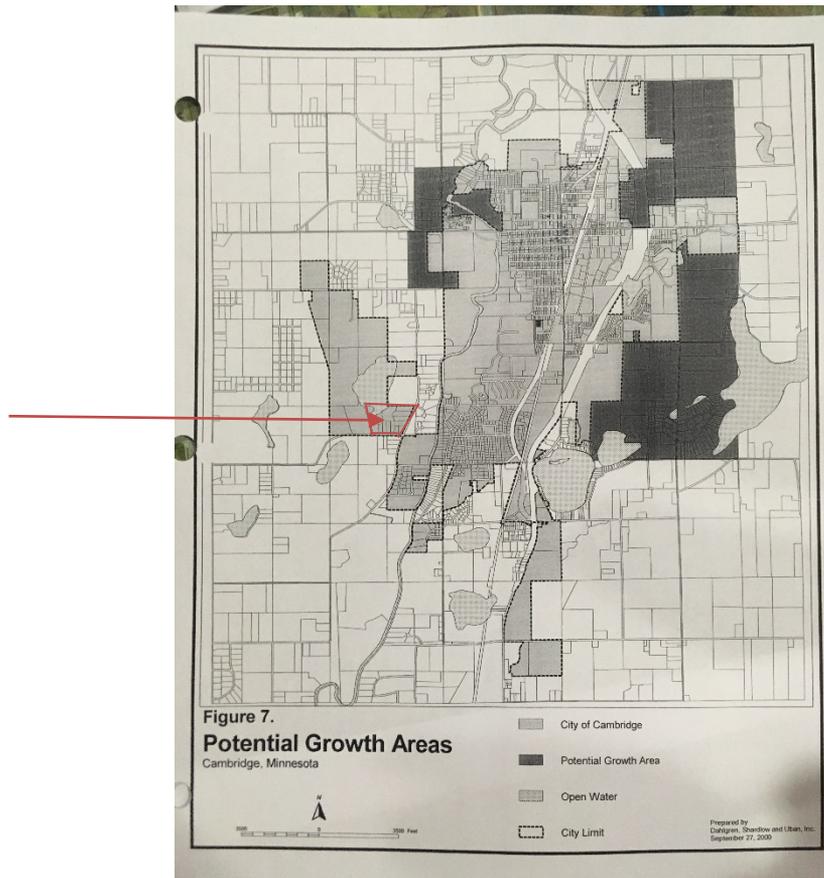
⁹² Test. of L. Woulfe.

⁹³ Ex. 119, at 83.

⁹⁴ Ex. 119; Test. of L. Woulfe.

Symmetry

70. As illustrated below, the City's current configuration is not symmetrical.⁹⁵



71. The detachment of the Petitioners' properties, outlined in red above, would not have an unreasonable effect on the symmetry of the City.

Undue Hardship

72. Petitioners seek detachment to avoid continued payment of City taxes and bonded indebtedness, which are assessed at a higher tax rate than is utilized by the Township with respect to neighboring properties.⁹⁶

73. In 2015, the Petitioners' annual property taxes paid to the City⁹⁷ were assessed as follows:

⁹⁵ Ex. 119, Figure 7.

⁹⁶ Ex. 12; Test. of V. Charles; Test. of J. Anderson.

⁹⁷ Ex. 1(C).

Lot	Property Owner	Total County Property Taxes	Taxes Paid to City
1	Belinski	\$5,808.00	\$2,375.71
2	Filleti	\$7,712.00	\$3,160.72
3	Dallman	\$3,822.00	\$1,555.67
4	Williams	\$4,094.00	\$1,667.94
5	Anderson	\$7,248.00	\$2,969.41
6	Cannon	\$3,054.00	\$1,239.51
7	Huntingto	\$3,726.00	\$1,516.15
8	Higley	\$4,050.00	\$1,649.97
9	Charles	\$7,680.85	\$3,148.15
10	Davis	\$2,894.00	\$1,173.04
11	Wanner	\$4,728.00	\$1,940.10
TOTAL			\$22,396.37

74. If the Property is detached and becomes part of the Township by operation of law, the Property will be assessed property taxes at much lower rates, as illustrated below based on the Township's 2015 tax rates:⁹⁸

Lot	Property Owner	Total County Property Taxes	Estimated Township Taxes
1	Belinski	\$5,808.00	\$675.15
2	Filleti	\$7,712.00	\$898.24
3	Dallman	\$3,822.00	\$442.10
4	Williams	\$4,094.00	\$474.00
5	Anderson	\$7,248.00	\$843.87
6	Cannon	\$3,054.00	\$352.25
7	Huntingto	\$3,726.00	\$430.87
8	Higley	\$4,050.00	\$468.90
9	Charles	\$7,680.85	\$894.66
10	Davis	\$2,894.00	\$333.36
11	Wanner	\$4,728.00	\$551.35
TOTAL			\$6,364.25

75. Given the City's total 2015 revenue of approximately \$6. 1 million, loss of the Property's tax revenue, measured at historical levels, would not unduly burden the City's provision of services to the remaining portions of the municipality.

⁹⁸ *Id.*

Hearing Costs

76. The parties did not agree to a division of the costs of this proceeding.

77. The Office of Administrative Hearings is required to allocate the costs of the proceeding to the parties on an equitable basis.⁹⁹

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Chief Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 414.06, 414.09, and 414.12 (2014).

2. The Petition for Detachment was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c).

3. The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d).

4. Petitioners bear the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.¹⁰⁰

5. Minn. Stat. § 414.06, subd. 3, provides in relevant part:

[T]he chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development.

6. The Petitioners have established, by a preponderance of the evidence, the following criteria set forth in Minn. Stat. § 414.06, subd. 3:

a. The proceeding was properly initiated by a Petition for Detachment signed by all property owners of record;

⁹⁹ See Minn. Stat. § 414.12, subd. 3.

¹⁰⁰ Minn. R. 1400.7300, subp. 5 (2015).

- b. The Property is within the boundaries of the City and abuts a boundary of the City;
- c. Detachment of the Property would not unreasonably affect the symmetry of the City; and
- d. The Property is not needed for reasonably anticipated future development.

7. The Petitioners have not established, by a preponderance of the evidence, that the Property is “rural in character and not developed for urban residential, commercial, or industrial purposes” as required by Minn. Stat. § 414.06, subd. 3, and so detachment is denied on this legally-sufficient basis.

8. Given the Petitioners’ failure to establish all necessary statutory criteria for detachment, it is unnecessary to reach a conclusion of law related to allocation of debt between the City and the Township.

9. Minn. Stat. § 414.12, subd. 3, specifies that if the parties do not agree to a division of the costs of the proceeding before the hearing, the costs “must be allocated on an equitable basis by the ... chief administrative law judge.”

10. It is equitable to allocate the costs of this proceeding as follows: 50 percent to the Petitioners; 25 percent to the Township; and 25 percent to the City.

11. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Chief Administrative Law Judge makes the following:

ORDER

1. The Petition for Detachment of the properties within the West Oaks Subdivision from the City of Cambridge is **DENIED**.

2. The Office of Administrative Hearings shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.

3. Pursuant to Minn. Stat. § 414.12, subd. 3, the Office of Administrative Hearings’ costs are to be divided between the parties as follows: 50 percent to the Petitioners; 25 percent to the Township; and 25 percent to the City.

4. This Order becomes effective upon issuance.

Dated: May 11, 2016



TAMMY L. PUST
Chief Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, .07, .09, .12 (2014). Pursuant to Minn. Stat. § 414.07, subd. 2, any person aggrieved by this Order may appeal to Isanti County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of this Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100 (2015). However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

In this detachment proceeding, the preponderance of evidence at hearing clearly established four of the five requirements set forth in Minn. Stat. § 414.06, subd. 3, as follows: (1) all property owners signed the Petition for Detachment; (2) West Oaks Subdivision is located within and abuts the City's boundaries; (3) detachment would not unreasonably affect the City's symmetry; and (4) the Property is not needed for reasonably anticipated future development. As such, the decision in this matter turns on whether the Petitioners have met their burden to establish the statute's remaining requirement: that the Property is rural in character and not developed for urban residential, commercial or industrial purposes. The Chief Administrative Law Judge finds that the preponderance of evidence at hearing does not establish that the Property is rural in character, and so the Petition for Detachment must be denied.

I. The Property is Not Rural in Character.

The term "rural in character" is not defined in Minnesota Statutes, chapter 414, or in the applicable rules. When statutory terms are undefined, "words and phrases [should be] construed according to rules of grammar and according to their common and approved usage..."¹⁰¹ Accordingly, it is appropriate to look to the common definition of the term "rural" when assessing the character of the Property at issue in this case. Various dictionaries define "rural" as: "of or relating to the country, country people or life, or agriculture;"¹⁰² "relating to or characteristic of the countryside rather than the town;"¹⁰³ and "of, relating to, or characteristic of the country; of or relating to people who live in the country: rural households; of or relating to farming; agricultural."¹⁰⁴

¹⁰¹ Minn. Stat. § 645.08(1) (2014).

¹⁰² *Rural*, Merriam-webster.com, <http://www.merriam-webster.com/dictionary/rural> (last visited May 9, 2016).

¹⁰³ *Rural*, Oxforddictionaries.com, <http://www.oxforddictionaries.com/definition/english/rural> (last visited May 9, 2016).

¹⁰⁴ *Rural*, American Heritage Dictionary of the English Language, Ahdictionary.com, <https://www.ahdictionary.com/word/search.html?q=Rural> (last visited May 9, 2015).

Under chapter 414, if property is “rural” it is not “urban or suburban.”¹⁰⁵ Therefore, definitions of those terms are instructive as well. Dictionary definitions of the term “urban” include: “in, relating to, or characteristic of a city or town;”¹⁰⁶ “of or relating to cities and the people who live in them;”¹⁰⁷ and “of, relating to, or located in a city: characteristic of the city or city life.”¹⁰⁸ The term “suburban” is defined with reference to the term “suburb,” which refers to: “a usually residential area or community outlying a city;”¹⁰⁹ “an outlying part of a city or town: a smaller community adjacent to or within commuting distance of a city: the residential area on the outskirts of a city or large town;”¹¹⁰ and “an outlying district of a city, especially a residential one.”¹¹¹

Because legislative intent controls all statutory interpretation,¹¹² the common usage of these terms must be guided by the legislature’s explicit findings embedded within chapter 414. In relevant part, the statute provides that city government is the most efficient form for “areas intensively developed for residential, commercial, industrial, and governmental purposes,”¹¹³ for which reason the statute allows cities to annex such properties – identified as those that are or about to become “urban or suburban in character.”¹¹⁴ Correspondingly, the statute provides that townships are the most efficient form of government for “areas used or developed for agricultural, open space, and rural residential purposes,”¹¹⁵ and so allows properties that are “rural

¹⁰⁵ At hearing, Petitioners argued that the detachment statute refers only to property being determined to be “rural in character and not developed for urban residential, commercial or industrial purposes,” and therefore it is unnecessary to define or distinguish the terms “urban” as opposed to “urban residential,” and the term “suburban” in this proceeding. The Chief Administrative Law Judge disagrees. The detachment statute is one portion of chapter 414, which in total encompasses an entire statutory scheme regulating municipal boundary adjustments. Viewed in total, the chapter provides certain rights and processes relevant to properties deemed “rural” in character and other rights and processes relevant to properties deemed “urban or suburban” in character. See Minn. Stat. §§ 414.02; 414.031; 414.0324; 414.033; 414.06 (2014). Reading the chapter as a whole, it is clear that the legislature intended that property found to be “rural in character” cannot at the same time be “urban or suburban in character.” The reverse is also true. As such, determining what is and what is not “rural in character” requires an understanding of what is, or is not, “urban or suburban in character.”

¹⁰⁶ *Urban*, oxforddictionaries.com,

http://www.oxforddictionaries.com/us/definition/american_english/urban (last visited May 9, 2016).

¹⁰⁷ *Urban*, Merriam-webster.com <http://www.merriam-webster.com/dictionary/urban> (last visited May 9, 2016).

¹⁰⁸ *Urban*, American Heritage Dictionary of the English Language, Ahdictionary.com, <https://ahdictionary.com/word/search.html?q=urban> (last visited May 9, 2016).

¹⁰⁹ *Suburb*, American Heritage Dictionary of the English Language, Ahdictionary.com, <https://ahdictionary.com/word/search.html?q=suburb> (last visited May 9, 2016).

¹¹⁰ *Suburb*, Merriam-webster.com, <http://www.merriam-webster.com/dictionary/suburb> (last visited May 9, 2016).

¹¹¹ *Suburb*, Oxforddictionaries.com

http://www.oxforddictionaries.com/us/definition/american_english/suburb (last visited May 9, 2016).

¹¹² Minn. Stat. § 645.16 (2014); *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385-86 (Minn.1999).

¹¹³ Minn. Stat. § 414.01, subd. 1a(2) (2014).

¹¹⁴ Minn. Stat. § 414.031, subd. 4(b)(1) (2014).

¹¹⁵ Minn. Stat. § 414.01, subd. 1a(2).

in character” to detach from a city and become part of a township.¹¹⁶

Judicial and administrative courts have examined factual circumstances in various statutory contexts to determine whether specific property is rural, urban or suburban in character.¹¹⁷ Under chapter 414, these same courts have examined the subject property’s current use, density, rate of development, zoning restrictions, proximity to other uses as a harbinger of impending development, and access to or use of public services to determine whether a specific property is “rural in character” or the opposite: “urban or suburban in character.”¹¹⁸

In the present case, the Property consists of large, wooded lots, each improved with a single-family residence and served by private wells and septic systems. The Property is used for residential purposes. The record at hearing indicated that the Petitioners reside on the Property and work in the City or surrounding area; they do not work the land.¹¹⁹ While property does not have to be devoted to agriculture in order to be deemed rural in character,¹²⁰ the fact that it is not is relevant to determining whether the property remains rural or has become urban or suburban in character.

Petitioners argue that the Property is rural in character based on the fact that their lots are: (1) primarily wooded and home to abundant wildlife; (2) “surrounded by agricultural properties and large tracts of undeveloped land, all of which are located in

¹¹⁶ Minn. Stat. § 414.031, subd. 3 (2014).

¹¹⁷ While the interpretations of the terms “rural,” “urban,” or “suburban” in other statutory contexts are not controlling in the present matter, courts’ identification of relevant criteria used to define these terms is instructive for their consistency with the typical chapter 414 analysis. Outside chapter 414, courts generally consider the agricultural versus other uses of the property, the low density of development in the area, and the lack of improvements or access to municipal services in determining whether property is “rural.” See *In re Engstrom*, 370 B.R. 205, 213 (Bankr. D. Minn. 2007); *In re Kyllonen*, 264 B.R. 17, 30-31 (Bankr. D. Minn. 2001); *Minnesota Power & Light Co. v. Carlton County*, 145 N.W.2d 68, 70 (Minn. 1966); *Staples v. State*, 46 N.W.2d 651, 653-54 (Minn. 1951); *Stees v. Bergmeier*, 91 Minn. 513, 516-17, 98 N.W. 648, 650 (1904) *Nat’l Bank of the Republic of New York v. Banholzer*, 69 Minn. 24, 29, 71 N.W. 919, 920 (1897); *Kiewert v. Anderson*, 65 Minn. 491, 492, 67 N.W. 1031, 1032 (1896).

¹¹⁸ See *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, *1, 8 (Minn. Ct. App. Sept. 25, 2013) (unpublished); *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-301 (1959); *State ex rel. Copley Twp. v. Village of Webb*, 250 Minn. 22, 25-30, 83 N.W.2d 788, 793-94 (1957); *In the Matter of the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson Pursuant to Minnesota Statutes, Section 414.031 (A-7593)*, Docket No. 2-0330-19393-BA, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 10, 26 (Office of Administrative Hearings January 13, 2009); *In the Matter of the Petition of the City of Bovey for the Annexation of Certain Land pursuant to Minnesota Statutes 414.031 (A-7431)*, Docket No. 2-0330-18032-BA, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 5, ¶ 19, 7 ¶¶ 37, 38, 42 (Office of Administrative Hearings July 5, 2007); and *In the Matter of the Petition of Dawson Grain Coop., Inc., for the Detachment of Certain Land from the City of Dawson Pursuant to Minn. Stat. ch. 414*, Docket No. 12-2900-15004-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER at 8, ¶ 5 (Office of Administrative Hearings, February 12, 2003).

¹¹⁹ Test. of G. Filletti; Test. of V. Charles; Test. of D. Hansen.

¹²⁰ *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300 (1959).

Isanti Township;”¹²¹ (3) sized at two acres or more with a “density of .19 homes per acre;¹²² and (4) not receiving City “ordinary and normal municipal services, including water, sewer, sidewalks, walking paths, street lighting, street cleaning, curbs, storm drains, fire hydrants, snow removal and typical emergency services.”¹²³ The City argues that the Property is not rural in character due to the fact that it: (1) was agreed to be urban or suburban in character when it was annexed in 1994; (2) is already developed for residential purposes; (3) is included in the City’s Comprehensive Plan and guided for future growth; (4) will soon be eligible to receive City water and sewer upon completion of new infrastructure on the west side of the Rum River. The Chief Administrative Law Judge examines each relevant claim, as set forth below.

Prior Characterization

The City asserts that the Property cannot be found to be rural in character because the former landowners and Developers agreed 22 years ago that the Property was then, or was about to become urban or suburban in character.¹²⁴ While the City is correct in its recitation of the historical facts, it is incorrect in the conclusion it draws from those facts. The chapter 414 characterization of specific property can, and in some cases must, change over time as development trends and municipal growth patterns evolve. The determination of the character of land for statutory purposes must be made based on current facts as evidenced in the present record.¹²⁵ The fact that the same property had different characteristics two decades in the past is not necessarily determinative of the property’s characteristics today.

Rate of Development

The rate of development in the area surrounding the Property is also a relevant inquiry. Other than the community college and the military reserve center, no commercial or industrial enterprises have been constructed in the area in over a decade. This is not surprising given that this timeframe was shaped by the largest economic downturn in the nation since the Great Depression, as a result of which the City’s rate of growth and development plummeted overall.¹²⁶ The record does not indicate that the area in proximity to the West Oaks Subdivision suffered any greater negative rate of development than did the rest of the City or the surrounding Township. Therefore, this factor does not materially contribute to the necessary determination of whether the area in which the Property is located is, today, rural in character.

¹²¹ Petitioners’ Memorandum of Law in Support of Petition for Detachment (Petitioners’ Brief), at 9.

¹²² *Id.*

¹²³ Petitioners’ Brief, at 2.

¹²⁴ Lindberg Letter; Ex. 101.

¹²⁵ *Minnesota Power & Light Co. v. Carlton County*, 275 Minn. 101, 103, 145 N.W.2d 68, 71 (1966), citing *National Bank of the Republic of New York v. Banholzer*, 69 Minn. 24, 29, 71 N.W. 919, 921 (1897).

¹²⁶ Test. of J. Shardlow.

The actual Property's rate of development is a more determinative factor in the analysis of its current character given that "... reasonable anticipation of growth and the manner in which that growth conforms to the planned utilization and development of property is at the core of the determination as to whether an area is becoming urban or suburban."¹²⁷ In the present case, the Property was platted into 11 lots. All 11 lots have been sold and all 11 single family homes have been constructed. Eleven driveways have been connected to and used for regular access to public streets. This is not a case where development was planned and has not materialized. In this case, all the development which was originally anticipated has already occurred.

As such, the Property can no longer be said to "becoming urban or suburban in character" under the statutory scheme of chapter 414; it became such when it was planned, platted, and constructed. While it has not yet developed further¹²⁸ since the original construction of the 11 homes, that fact is not determinative. Clearly, chapter 414 does not require that a typical city block of houses morph from urban or suburban to rural based on the fact that the development is "full" and no additional homes are constructed throughout the ensuing decades. The statute provides no differently for large-lot neighborhoods built-out in full as designed and platted. Therefore, the post-build-out rate of development of West Oaks Subdivision itself does not weigh in favor of a finding that the property is currently rural in character.

Municipal Services

Petitioners receive various public services from the City including police and fire protection, election administration, and land use controls and planning. Due to a contracted agreement whereby the City and the Township have swapped responsibilities for getting actual plows on the ground on specific streets, the Petitioners benefit from the snowplowing of 28th Avenue SW.¹²⁹ The owners in West Oaks Subdivision have the same right as other City residents to request the installation of streetlights and sidewalks if the Petitioners are willing to be assessed for the costs of such; they have never submitted such a request. The City has no plans to connect its existing system of public walking trails into the large wooded lots of West Oaks Subdivision.¹³⁰

¹²⁷ *In the Matter of the Petition of the City of Pine River for Annexation of Unincorporated Property in the Township of Wilson Pursuant to Minnesota Statutes, Section 414.031 (A-7593)*, Docket No. 2-0330-19383-BA, 2009 WL 314187, at *17, FINDINGS OF FACT, CONCLUSIONS AND ORDER (Minn. Off. Admin. Hrgs Jan. 13, 1999), (noting that industrial development area improved with sewer and water had only two of seven lots built out; expected growth of 10 people per year in over 11,000 improved acres of municipality did not constitute an area becoming "urban or suburban in character.")

¹²⁸ The record indicates that more development is possible in the future, in that each lot was designed to support the installation of two individual on-site sewage treatment systems See Ex. 103, at unnumbered p. 19 (9-14-99 Planning Commission Staff Report, at 2.); Test. of D. Hansen.

¹²⁹ Ex. 121; Test. of L. Woulfe.

¹³⁰ Ex. 115; Test. of L. Woulfe.

Petitioners testified that they are unhappy with the level of police service they have been provided by the City over the years, and that they are assured that they will receive from the Township all the public services they require if detachment is granted.¹³¹ While true, these facts are not directly relevant to the inquiry at issue. The detachment statute allows the Chief Administrative Law Judge to grant detachment only if property is rural in character. Detachment is not statutorily available merely because landowners are dissatisfied with their government's decisions regarding the levels of public services provided to residents; elections are.

Petitioners correctly note that their Property is not served by City water or sewer. They cite this fact as evidence of a critical service deficit that should lead to the conclusion that the Property is rural in character. It is interesting to note that this service deficit could change in the relatively near future if the City constructs Proposed Water Tower No. 3 and related water distribution infrastructure in or around 2018 as presently planned. While the record clearly established that Petitioners currently do not have City water and sewer, it did not address in any manner whether Petitioners want City water if it is soon available given that: (a) they have private wells which provide them potable water at no cost other than maintenance; (2) they would be assessed a portion of the significant costs of the City's water system improvements; and (3) they would pay for all water used through user fees. While it is true that they pay now for some portion of the City's existing water and sewer systems as such is built into the City's tax rate, their costs will increase significantly if the systems are improved to provide service to properties on the west side of the Rum River. While this fact may serve as a motivator for the timing of this detachment action, it is not determinative as to whether the Property is rural in character given the other relevant factors discussed herein.

The City argues that its plans for water system infrastructure development are relevant to a determination of the character of the Property at issue, as it relates to the Property being needed for future growth as guided by the Comprehensive Plan. The Chief Administrative Law Judge is unpersuaded. The evidence related to the definitive nature of those plans was inconclusive given the passage of time since the 2001 Comprehensive Plan proposed the improvements, the intervening economic circumstances faced by the community and the Council's recent action to defer a 2016 project start date to at least 2018. As such, the Chief Administrative Law Judge finds that the Petitioners' use of City services and the City's future plans for service improvements are relevant to but not determinative with respect to the characterization of the Property for purposes of the detachment statute.

¹³¹ Test. of J. Anderson; Test. of D. Hansen.

Zoning

The Property is currently zoned R.A., or Rural Residential/Agricultural, with a Shoreland Special Protection District overlay.¹³² This zoning results from the fact that the Property came into the City through annexation and neither the landowners nor the City ever had reason to request a zoning change.¹³³ The record indicates that the City was unaware that the zoning classification for West Oaks Subdivision had not been changed to R-1 – Single Family Residence, as evidenced by the fact that the City incorrectly recorded the Property’s zoning as such in the 2001 Comprehensive Plan.¹³⁴

No matter what title has been given to the Property’s zoning classification, the record established by the 1999 Development Agreement and the approved Final Plat indicates that the Property is to be used for residential purposes. While the Rural Residential/Agricultural zoning classification would also allow home businesses and limited agricultural uses including the keeping of a few farm animals,¹³⁵ the record does not indicate that any of the Petitioners use the Property for these purposes. While the current zoning is consistent with the Property’s residential use, the fact that the holdover zoning classification allows for uses that the landowners have never utilized does not tip the scales to a conclusion that the Property is rural in character.

Density

The density of the West Oaks Subdivision is relevant to an examination of the character of the Property.¹³⁶ Prior to being annexed into the City in 1994, the Property was undeveloped land.¹³⁷ The Developers desired to construct a residential development on it. They could not do so at a density that made economic sense given that the Property was then within the County’s USA-2 Urban Service Area District #2, which zoning classification allowed only one single-family residence per 10-acre parcel.¹³⁸ By “becoming urban or suburban” through the annexation process,¹³⁹ the Property was allowed to develop at a significantly increased net density rate of one

¹³² Exs. 12; 106; Test. of L. Woulfe.

¹³³ Ex. 106 (Cambridge Zoning Ordinance Section 156.023).

¹³⁴ Ex. 119; Figures 5, 6.

¹³⁵ Ex. 106 (Cambridge Zoning Ordinance § 156.043(B)).

¹³⁶ See *City of Lake Elmo v. Nass*, No. A12-2008, 2013 WL 3491161, *1, 8 (Minn. Ct. App. Sept. 25, 2013) (unpublished) (affirmed finding that property was rural in character given its agricultural zoning designation, the fact that only two households existed on the 57 acre tract of property, and the fact that the property lacked city water, sanitary sewer, storm sewer, solid waste collection or disposal or law-enforcement services; *State ex rel Copley Twp. v. Village of Webb*, 250 Minn. 22, 25-30, 83 N.W.2d 788, 793-94 (1957) (finding land was not suburban in character with a population density of 0.4 persons per acre, the “vast percentage” of which “is uninhabited, being either timberland or unworked fields” without roads other than a U.S. highway serving a few local businesses.)

¹³⁷ Ex. 103, at unnumbered p. 1 (8-10-99 Planning Commission Staff Report, at 1).

¹³⁸ Ex. 107; Test. of John Shardlow.

¹³⁹ Ex. 101; Lindberg Letter.

single-family residence for approximately 5.52 acres,¹⁴⁰ which has evolved into a population density of approximately 1.5 individuals per acre. If the undevelopable acreage attributed to Weisbrod Lake and the three designated wetlands are removed from the equation, the density rates would be even higher. Such density levels are not typical for traditional rural areas, nor are they typical for most urban core areas. They are not atypical in large-lot residential developments built out at the edges of urban communities throughout the state. For purposes of chapter 414, such land is often classified as “suburban” in character:

Land which is in the process of being presently, or in the foreseeable future, overflowed with the expanding population of nearby urban areas, as indicated by the existence of a more or less scattered development of small tracts and homes primarily used or intended for residential living, as distinguished from dwellings which are primarily accessory to the operation of bona fide farms, is suburban.¹⁴¹

As such, the consideration of this factor contributes to the conclusion that the West Oaks Subdivision is suburban, not rural, in character.

Property Use

Petitioners accurately note that their Property is surrounded by parcels located in the Township, but inaccurately describe West Oak Subdivision as “surrounded by agricultural properties and large tracts of undeveloped land.”¹⁴² The Property is bounded on the north by the Guetschoff property, which is developed with one single-family home and otherwise consists currently of nonproductive agricultural land, some of which is reported to be used for raising chickens and goats. As such, the existing use of that property is primarily residential. To the south and the east, the Property is adjacent to other parcels improved and used for residential purposes. On balance, the area within which the Property is located is used for private family homes situated on large, wooded lots. A tour of the area revealed that the Property at issue in the present case appears no different than, in that it is used identically to, the parcels located across Country Road 70 or south of 28th Avenue SW. While those properties are located in the Township and West Oaks Subdivision is located in the City, that difference results from the fact that the former owners and Developers of the Property requested annexation into the City while the owners of the surrounding residences did not.

In addition, West Oaks Subdivision is adjacent to a large industrial use in the area: the Cambridge Municipal Airport. The Property is only three to four miles from

¹⁴⁰ Ex. 103, at unnumbered p. 2 (8-10-99 Planning Commission Staff Report, at 2).

¹⁴¹ *State ex rel. Town of White Bear v. City of White Bear Lake*, 255 Minn. 28, 36-38, 95 N.W.2d 294, 300-301 (1959).

¹⁴² Petitioners’ Brief, at 14.

the City core, an area that is accessible by vehicle in less than a five minute drive. Together with the fact that it is adjacent, to the east, to other platted, residential developments and, to the south, to properties used for single family residential purposes, these factors indicate that the Property is not definitively “characteristic of the country” or “related to farming; agriculture.”¹⁴³ None of the residents utilize the Property for any agricultural pursuits, nor do any of their neighbors in ways that are open or obvious, with the reported exception of the unimproved Guetschoff property. West Oaks Subdivision is residential property that resulted from planned and implemented improvements to what had formerly been vacant, unused land. As such, it is no longer “of or relating to the country, country people or life, or agriculture”¹⁴⁴ but instead appears to be “an outlying part of a city or town: a smaller community adjacent to or within commuting distance of a city: the residential area on the outskirts of a city or large town.”¹⁴⁵ As such, the Property appears to be suburban in character.

Overall, Petitioners insist that the Property is rural in character because it contains large, wooded lots and each of the 11 homes is screened from others by trees and other vegetation. They point to the abundance of wildlife, commonly found in rural areas, as evidence that they too reside “in the country.” On paper, those facts are compelling. In reality, as established by an in-person view of the Property, West Oaks Subdivision appears to be a suburban residential development of large, treed lots not unlike similar residential developments that closely surround the core of urban communities throughout the state. The houses are clustered in a planned layout. All access driveways connect to public streets. Some of the constructed homes are within 150 feet of each other, though screened from view by woods and other vegetation.¹⁴⁶ Neighbors have natural privacy created by foliage and distance, but are not so far apart that they do not share common interests such as the sufficiency of police and fire protection provided to their defined community.

Petitioners argue that the result in this case should be the same as the result in the detachment proceeding involving the neighboring Sprino Property. They note that the Sprino Property was undeveloped, then annexed into the City, then allowed to detach in a 2002 proceeding due to findings that the property remained rural in character.¹⁴⁷ While prior decisions in other administrative proceedings are not precedential at the Office of Administrative Hearings,¹⁴⁸ they are instructive. A review of the Sprino matter reveals the following similarities: the present Property was

¹⁴³ *Rural*, American Heritage Dictionary of the English Language, Ahdictionary.com, <https://www.ahdictionary.com/word/search.html?q=Rural> (last visited May 9, 2015).

¹⁴⁴ *Rural*, Merriam-webster.com, <http://www.merriam-webster.com/dictionary/rural> (last visited June 15, 2015).

¹⁴⁵ *Suburb*, Merriam-webster.com, <http://www.merriam-webster.com/dictionary/suburb> (last visited May 9, 2016).

¹⁴⁶ See Ex. 108.

¹⁴⁷ *In the Matter of the Petition of Brian and JoAnn Sprino for the Detachment of Certain Land from the City of Cambridge pursuant to Minn. Stat. Chapter 414*, Docket No. 1-2900-14926-2, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Minn. Off. Admin. Hrgs Sept. 26, 2002).

¹⁴⁸

undeveloped when annexed into the City as was the Sprino Property in approximately the same timeframe; both were zoned as Rural Agricultural/Special Shoreland Protection District; both received, and did not receive, similar City services; and both sought detachment due to an expressed dissatisfaction with the rate of City taxes imposed given the public services received. But one crucial dissimilarity exists: the Sprino Property remained undeveloped after annexation. To the contrary, the Property here at issue was platted, 11 homes were constructed, 11 wells were dug, 11 septic systems were installed, and at least 11 families have moved onto the land forming a piece of the community known as West Oaks Subdivision. It is this improvement of the land – the platting, building, paving, drilling, constructing and living in 11 homes, and the dedication of a public street - that make this case different than the Sprino case. As the facts are significantly different, so is the result.

The Chief Administrative Law Judge finds that the West Oaks Subdivision is not rural in character but is instead suburban in character, at present. Given the determination that the Property is not rural in character, the Chief Administrative Law Judge need not, and does not, reach the question of whether West Oaks Subdivision is developed for urban residential purposes.

II. Division of Costs

Minn. Stat. § 414.12, subd. 3, requires the Chief Administrative Law Judge to allocate equitably between the parties the costs of administrative law judge time spent on boundary adjustment matters. This legislative directive is mandated by the fact that the Office of Administrative Hearings operates primarily¹⁴⁹ as an “enterprise fund” within the executive branch of Minnesota state government. As such, Minn. Stat. §§ 14.53 and 14.55 (2014) direct the Office of Administrative Hearings to assess its costs to the state agencies and other political subdivisions to which it provides the services of administrative law judges. Each fiscal year, Minnesota Management & Budget approves a billable rate for the agency’s services, and the agency then charges for its services pursuant to this approved hourly rate.¹⁵⁰

Some history is instructive.¹⁵¹ Legislatively created in 1959, the Municipal Boundary Board operated until 1999 when it was legislatively dissolved. During the Board’s 40-year tenure, the appointed board members issued final decisions and the costs of the agency were legislatively funded. In 1999, the functions of the board were transferred to the Office of Strategic and Long Range Planning, commonly referred to as Minnesota Planning, and in 2003 the functions were again transferred, this time to the Minnesota Department of Administration. Since 1999, administrative law judges at the Office of Administrative Hearings have presided over all contested case

¹⁴⁹ The Office of Administrative Hearings receives different funding for the work of its Workers’ Compensation Division and for contested cases related to data privacy matters.

¹⁵⁰ See Minn. Stat. §§ 14.53, 14.54.

¹⁵¹ See Office of Administrative Hearings’ website at <http://www.mba.state.mn.us/History.html>.

proceedings related to municipal boundary adjustment matters. In accord with Minn. Stat. § 14.53 and 14.55, the costs of the services provided by administrative law judges¹⁵² have been equitably apportioned to the parties to boundary adjustment matters under the authority of Minn. Stat. § 414.12 since 1999.

In recognition of the legislature’s funding scheme pertinent to the state agency, chapter 414 specifically provides that the Office of Administrative Hearings “is not liable for [its] costs”¹⁵³ but instead “the costs must be allocated on an equitable basis” by the Chief Administrative Law Judge unless otherwise agreed to by the parties.¹⁵⁴ In this orderly annexation action, the Chief Administrative Law Judge has allocated the costs as follows: Petitioners shall bear 50% and the City and the Township shall each bear 25% of the costs of the proceeding.

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¹⁵² Parties have not been billed for the costs of the administrative staff in the Municipal Boundary Adjustment Unit, which remain funded through a general fund appropriation from the legislature.

¹⁵³ Minn. Stat. § 414.12, subd. 3(b).

¹⁵⁴ Minn. Stat. § 414.12, subd. 3(a), (c).